

## 48A C.J.S. Judges § 193

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### A. General Considerations

## § 193. Commissions and fees—Collection and accounting

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(12)

**The fee that a judge may be allowed to collect is that fixed by law, and the judge is required to account for fees collected for judicial services and may be liable for negligence in failing to collect a fee.**

The fee that a judge may be allowed to collect is that fixed and limited by law.<sup>1</sup> It is not permissible for a judge to increase the amount by construction or in any indirect manner.<sup>2</sup> Where a complaint is filed against several persons, the same fees shall be charged as though there were but a single defendant until demand is made for separate trials.<sup>3</sup> Fees shall be charged only for such extra duties as are necessary, caused by such separation.<sup>4</sup>

#### *Accounting generally.*

A judicial officer is bound to account for any fees in excess of the compensation or allowance authorized by law to be retained by such officer.<sup>5</sup> If he or she does not do so, the county may bring an action against him or her in equity for an accounting.<sup>6</sup> Ordinarily, a judicial officer is required to report and account to the public treasury for all fees received by him or her for services rendered by virtue of the office,<sup>7</sup> no matter from what source derived,<sup>8</sup> over and above his or her actual and necessary expenses.<sup>9</sup> A judge who collects fees pursuant to the authority conferred by statute is estopped to assert the unconstitutionality of the provision of the statute prescribing how such fees, when collected, should be disbursed.<sup>10</sup>

#### *Accounting for moneys received for services not within duties of office.*

Under some statutes, any gratuity received by a probate judge over and above the statutory fee may be retained by the judge for his or her individual use and benefit.<sup>11</sup> A judge may not be required to account for sums collected by the judge for services rendered which he or she is not in duty bound to perform and for which no fees are fixed by law.<sup>12</sup> A county judge may be required to account for fees received for services not appertaining to the office of judge, under the laws of the state, but collected under the authority of the federal law.<sup>13</sup>

***Negligence in collecting.***

Where a judge negligently fails to collect a fee due to the judge's office, it may be charged to him or her on account of his or her compensation.<sup>14</sup> In order to hold the judge liable for failure to collect the fee, it must appear that he or she willfully or negligently omitted to do so.<sup>15</sup>

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**Footnotes**

- 1 Del.—*Highfield v. Delaware Trust Co.*, 38 Del. 116, 188 A. 919 (Super. Ct. 1936) (disapproved of on other grounds by, *In re Zoller's Estate*, 53 Del. 448, 171 A.2d 375 (1961)).
- 2 Ga.—*McAlpin v. Chatham County*, 26 Ga. App. 695, 107 S.E. 74 (1921).
- 3 Neb.—*Downey v. Coykendall*, 81 Neb. 648, 116 N.W. 503 (1908).
- 4 Neb.—*Downey v. Coykendall*, 81 Neb. 648, 116 N.W. 503 (1908).
- 5 Ohio—*City of Kettering v. Berger*, 4 Ohio App. 3d 254, 448 N.E.2d 458 (2d Dist. Montgomery County 1982).
- 6 S.C.—*Dillon County v. Maryland Cas. Co.*, 223 S.C. 233, 75 S.E.2d 254 (1953).
- 7 N.D.—*Dickey County v. Austin*, 61 N.D. 309, 237 N.W. 831 (1931).
- Va.—*Simmons v. City of Norfolk*, 146 Va. 630, 132 S.E. 54 (1926).
- 8 Okla.—*Finley v. Territory*, 1903 OK 38, 12 Okla. 621, 73 P. 273 (1903).
- S.C.—*Spartanburg County v. Pace*, 204 S.C. 322, 29 S.E.2d 333 (1944).
- 9 Idaho—*Rhea v. Board of County Com'rs*, 12 Idaho 455, 13 Idaho 59, 88 P. 89 (1907).
- 10 Mo.—*Greene County v. Lydy*, 263 Mo. 77, 172 S.W. 376 (1914).
- 11 Idaho—*Rhea v. Board of County Com'rs*, 12 Idaho 455, 13 Idaho 59, 88 P. 89 (1907).
- 12 N.D.—*Sargent County v. Sweetman*, 29 N.D. 256, 150 N.W. 876 (1915).
- 13 Colo.—*Glaister v. Board of Com'rs of Kit Carson County*, 22 Colo. App. 326, 123 P. 955 (1912).
- 14 Colo.—*Frost v. Board of Com'rs of Teller County*, 43 Colo. 43, 95 P. 289 (1908).
- 15 Neb.—*Douglas County v. Vinsonhaler*, 82 Neb. 810, 118 N.W. 1058 (1908).

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